IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 806 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOKILABEN MANUBHAI ARYA

Versus

MUNICIPAL COMMISSIONER

Appearance:

MR PARTHIV B SHAH for Petitioner.

MR PRANAV G DESAI for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 22/03/2002

ORAL JUDGEMENT

The applicant has filed the Civil Revision Application under Section 115 of the Code of Civil Procedure, challenging the order passed by the learned Assistant Judge, Vadodara in Misc. Civil Appeal No. 93 of 2001 on 2nd May 2001 who has confirmed the order passed by Civil Judge (JD), Vadodara, on 12-3-2001 passed below Exh. 5 in Regular Civil Suit No. 128 of 2001.

2. The facts, as are emerged from the record, are that the applicant was working in Vadodara Municipal Corporation from 30th July 1975 as Junior Clerk. It is the case of the applicant that one complaint was filed against her on 12-4-1998 by one Mr. Abdulbhai Gulambhai Dudhwala with the Ward Officer, Ward No.9, Panigate, Vadodara, wherein it was alleged that the applicant had accepted the money from him for the month of September, October and November 1998 amounting to Rs. 5,325/= for which no receipt was given nor the said amount was deposited by her in Municipal Corporation. On the basis of the said complaint, the respondent authorities have filed criminal complaint in Panigate police station bearing C.R. No. 93 of 1999 and the departmental inquiry was also initiated by the respondent. The allegation made against the applicant was that she has used the said amount for her personal use and thereby the amount was misappropriated by her. The criminal complaint was filed against the applicant on 13-4-1999 and chargesheet was given on 10-5-2000.

3. The applicant thereafter filed Regular Civil Suit No. 128 of 2001 in the Court of the Civil Judge (JD) on 5th February 2001 and prayed for stay against departmental inquiry on the ground that the criminal complaint was already filed against her and it has been numbered as 'Criminal Case No. 1737 of 1999. It was further stated by the applicant that till the criminal proceedings were over, the departmental proceedings could not be proceeded further as in the departmental proceedings she was required to disclose her defence which would cause prejudice in the criminal proceedings. However, the learned Joint Civil Judge (JD) has rejected application preferred by the applicant below Exh. 5 in Regular Civil Suit No. 128 of 2001 by passing an order on 12th March 2001.

4. Being aggrieved by the aforesaid order of the learned Civil Judge (JD), Vadodara, the applicant preferred Misc. Civil Appeal No. 93 of 2001 before the learned Assistant Judge, Baroda, who has also dismissed the Misc. Civil Appeal for the reason stated in the said order. Being aggrieved and dissatisfied with the said order, the applciant has preferred the present Civil Revision Application before this Court. The applicant has, inter alia, contended in the memo of the present application that the lower Court has seriously erred in not considering the fact that the trial Court had not considered the documentary evidence submitted by the applicant in respect of her case, and that the lower

Court has also seriously erred in dismissing the said application on the ground that the departmental inquiry proceedings and criminal proceedings are separate actions and that the lower court has equally erred in not considering that if the departmental inquiry was not stayed the defence of the applicant would be disclosed while defending the inquiry and so the same could be misused against the applicant in the criminal proceedings, and that though the applicant was working since 1975 and not a single memo was ever issued against the applicant for any misconduct or fraud.

5. I have heard Mr. P.B. Shah, learned counsel appearing for the applicant and Mr. Pranav G. Desai, learned counsel appearing for the respondent. Mr. P.B. Shah, the ld. counsel appearing for the applicant has reiterated the submissions made and contentions urged before the Courts below. He has further submitted that a false case was made out against her as the complaint was filed by Mr. Dudhwala on 12-4-1998 whereas he was referring to the collection of amount for gas bills for the period, September, October and November 1998. This was apparently not correct. Even the chargesheet issued by the respondent on 10-5-2000 refers to the date of written complaint of Mr. Dudhwala as 12.4.1998, whereas the dates of acceptance of the amount were given as 7.10.1998, 20.11.1998 and 12.12.1998. The list of evidence given along with the chargesheet also refers to the date of complaint as '12.4.1998'. On the basis of these documents, the applicant has submitted that a false complaint was filed against her and on the basis of this complaint only, the departmental proceedings were initiated against her and that there was no basis for filing criminal complaint against her. In such a situation the courts below were not justified in refusing to stay the proceedings of departmental inquiry. It was further argued by the ld. counsel for the applicant that both criminal proceedings and departmental proceedings were based on same facts and materials and hence both these proceedings cannot be proceeded with simultaneously.

6. I have considered the submissions made by the ld. counsel appearing for the applicant, and I have also gone through the orders passed by both the courts below, and also perused the documentary evidence filed in these proceedings. I am, however, not convinced by the arguments canvassed by the ld. counsel appearing for the applicant. The very reliance placed by the applicant on the date of the applicant, i.e., 12-4-1998, is unfounded as there appears to be some error while affixing the

stamp at the time of receipt of the complaint, as in the very complaint it is mentioned that the complainant had himself gone to make the payment of the bill on 9.2.1999. It, therefore, appears to me that the said date might have been '12th April 1999' instead of '12th April 1998'. In any case, it is a matter of evidence, and the correct date can be ascertained only during the course of trial. Simply on the basis of the said date, at this stage, it cannot be said that the departmental proceedings were wrongly initiated against the applicant. I am further not inclined to accept the submissions made by the applicant that the departmental proceedings and criminal proceedings cannot be proceeded with simultaneously as there is no bar in the law for taking up both these proceedings simultaneously. The appellate Court is right in holding that there were serious allegations of misappropriation against the applicant and criminal proceedings would take long time and because of that the departmental proceedings would be unnecessarily delayed. In such a situation, it is not advisable to stay the departmental proceedings till the completion of the criminal proceedings. The law laid down by the Hon'ble Supreme Court in the case of Capt. M. Paul vs. Bharat Gold Mines Ltd, reported in (1999) 3 SCC 679 supports the case of the respondent rather than it supports the case of the applicant.

7. It is also a settled position in law that when concurrent findings of facts are given by both the courts below, the High Court should not interfere while exercising its revisional powers under Section 115 of Civil Procedure Code. In the present case also, the learned trial Judge has rejected the application below Exh. 5 in Regular Civil Suit No. 128 of 2001, and the appeal filed against the said order was also dismissed by the ld. Joint Civil Judge (SD), Vadodara. I, therefore, do not find any substance in the present Civil Revision Application. No jurisdictional error was committed by the courts below nor there was any failure of justice. In this view of the matter, this Civil Revision Application is rejected. Notice discharged. Ad-interim relief granted earlier is vacated. There will, however, be no order as to costs.

rmr. [K.A. Puj, J.]